# Supreme Court of The United States

October Term, 1948

49

No. 49

VALENTINE GOESAERT, MARGARET GOESAERT, GERTRUDE NADROSKI and CAROLINE McMAHON,
Appellants,

vs.

OWEN J. CLEARY, FELIX H. H. FLYNN and G. MENNAN WILLIAMS, Members of the Liquor Control Commission of the State of Michigan, Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN

## BRIEF OF APPELLANTS

Anne R. Davidow,
Attorney for the Appellants,
3210 Book Tower,
Detroit 26, Michigan.

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**B. The opinions of the three Judges' Court in the United States District Court for the Eastern District of Michigan, Southern Division are reported in: Goesaert vs. Cleary, 74 F. Supp. 735 (1947).**

**C. The jurisdiction of this Court is invoked under Section 380, Title 28 of the Judicial Code and Judiciary of the United States Code (Judicial Code, Section 266, amended.)**

The statement as to jurisdiction of this Court and brief in support thereof, was printed and submitted to this Court. It was considered by the Court and probable jurisdiction noted.

The case was transferred to the summary docket.

## D. CONCISE STATEMENT OF THE CASE

(Numerical References in parentheses are references to printed Record, unless otherwise noted)

Plaintiffs are female bar owners who act as barmaids in their own establishments, daughters of female bar owners who work in the bars owned by their mothers, and female bartenders (barmaids) who are employed by male and female bar owners (2, 9, 18-39).

Defendants are the members of the Liquor Control Commission of Michigan (1).

The suits were instituted under Title 28, Section 41, Subdivision 1, of the Judicial Code and Judiciary of the United States Code Annotated, because the actions arise under the Constitution of the United States, Section 1 of the 14th Amendment to the Constitution of the United States, and the matter in controversy exceeds, exclusive of interest and costs, the sum of $3000.00 (1, 8).

The actions were brought in the names of the plaintiffs and persons similarly situated and were consolidated for the purpose of the hearing and appeal (2, 8, 9, 18-39, 59-76).

Plaintiffs allege that Section 19(a) of the Liquor Control Act of Michigan, which was added by Act 133 of the Public Acts of Michigan 1945, was and is a violation of the 14th Amendment, Section 1, of the Constitution of the United States (4-6, 11-13).

Section 19(a) of the Liquor Control Act of Michigan, which was added by Act 133 of the Public Acts of Michigan, 1945, provides (9-10):

> "No person shall act as bartender in any establishment licensed under this act to sell alcoholic liquor for

consumption on the premises in any city now or hereafter having a population of 50,000 or more, unless such person shall be licensed by the commission under the provisions of this section: Provided, That the commission may adopt rules and regulations governing the licensing of bartenders in other political subdivisions of the state. Such licenses shall expire on the thirtieth day of April following the issuance thereof. An annual license fee of $2.00 shall be paid by each applicant, which shall be credited to the general fund of the state. Each applicant for license shall be a male person 21 years or over, shall submit a certificate from his local board of health or health officer showing that such person is not affected with any infectious or communicable disease, and shall meet the requirements of the commission; Provided, That the wife or daughter of the male owner of any establishment licensed to sell alcoholic liquor for consumption on the premises may be licensed as a bartender by the commission under such rules and regulations as the commission may establish. A license issued under the provisions of this section may be revoked or suspended by the commission in case the licensee shall drink on duty or shall violate the rules and regulations of the commission. In case of the refusal to issue or the revocation or suspension of a license by the commission, the person aggrieved shall be entitled to a hearing before the commission. The findings of the commission at such hearing shall be final as to questions of fact. The commission shall issue to each licensee an identification card to which shall be attached a photograph of the licensee. Such identification card shall be carried by the licensee at all times while on duty and shall be shown by such licensee on request. For the purpose of this act a bartender shall be construed to mean a person who mixes or pours alcoholic liquor behind a bar."

All of the plaintiffs are citizens of the United States and citizens of the State of Michigan. All reside in Dearborn, Michigan, except two who live in Detroit and work in bars in Dearborn (1, 8, 18-39).

The City of Dearborn has a population in excess of 50,000 according to the last Federal census (3, 10).

Plaintiffs, bar owners, allege that they have large sums of money invested in their businesses; plaintiffs, bartenders, allege they are dependent upon their occupation as barmaids for their livelihood; that the enforcement of the act complained of will deprive them of their property and will result in immediate and irreparable injury to them (2-5, 9-12, 18-39).

An order was entered by the Honorable Theodore Levin, United States District Judge, convening a Court of three judges to hear the application of the plaintiffs for an interlocutory injunction, which contained a temporary restraining order, restraining the defendants from enforcing the provisions of Section 19(a) of the Liquor Control Act of Michigan which was added by Act 133 of the Public Acts of Michigan 1945 (14-15).

Defendants filed motions to dismiss the plaintiffs' complaints for the reasons that the Court had no jurisdiction over the subject matter and the plaintiffs had failed to state a claim upon which relief could be granted (16).

The hearing on the application for an interlocutory injunction was adjourned by consent of counsel to September 9, 1947 (17-18), and came on to be heard before the Honorable Charles C. Simons of the United States Circuit Court of Appeals, 6th Circuit, Honorable Theodore Levin, and Frank A. Picard, United States District Judges, the Court of three judges, on that day.

Upon colloquy between the Court and counsel for the respective parties, Defendants stated they had no answers prepared, and stipulated that the facts were as alleged in Plaintiffs' Bills of Complaint. They admitted plaintiffs'

capacity to sue and the theory upon which suit was instituted (41).

Under these circumstances, it was agreed that there would be no difference in procedure on the petition for temporary and prayer for permanent injunction (41). Counsel for the respective parties then presented their arguments to the Court (41-58).

The majority opinion of the Court was signed by Hon. Theodore Levin and concurred in by Hon. Charles Simons (59-64).

Hon. Frank A. Picard filed his dissenting opinion (65-74).

A final order, denying plaintiffs' application for an injunction and dismissing plaintiffs' complaints, was signed and filed. Plaintiffs made application for a Restraining order pending an appeal to this Court. There being no objection, the lower court added a restraining provision in said final order (74-75).

## E. SPECIFICATION OF ASSIGNED ERRORS

Plaintiffs claim that manifest error intervened to the prejudice of the appellants, to-wit:

1. The Court erred in not finding that the provision of Act 133 of the Public Acts of the State of Michigan for 1945, Michigan Statutes Annotated, Sec. 18.990(1) setting up the standard of 50,000 population according to the last Federal Census, was an arbitrary and unreasonable classification.

2. The Court erred in not finding that the provisions of the said Act 133 of the Public Acts of the State of Michigan for 1945 was unjust and unfair classification as to sex.

3. The Court erred in not finding that the classification in said Act limiting the registration of bartenders to "male persons and wives and daughters of male owners" was an unfair discrimination against women owners of bars.

4. The Court erred in not finding that the classification in said Act limiting the registration of bartenders to "male persons and wives and daughters of male owners" was an unfair discrimination against women bartenders.

5. The Court erred in not finding that the classification in said Act limiting the registration of bartenders to "male persons and wives and daughters of male owners" was an unfair discrimination against daughters of female owners.

6. The Court erred in not finding that the classification in said Act limiting the registration of bartenders to "male persons and wives and daughters of male owners" was an unfair discrimination between waitresses and female bartenders.

7. The Court erred in not finding that Section 19(a) of said Act, added by Act 133 Public Acts of Michigan of 1945, is repugnant to the Fourteenth Amendment to the Constitution of the United States, in that it creates an unreasonable and arbitrary classification, and denies the plaintiffs of the equal protection of the laws.

8. The Court erred in relying on conjecture and supposition as to the reasons for the action by the Michigan Legislature in enacting said Act.

9. The Court erred in not accepting plaintiffs' allegations of fact as true, in view of defendants' Motion to Dismiss.

10. The Court erred in assuming facts without the taking of testimony.

11. The decree dismissing plaintiffs' Amended Complaints is contrary to law.

## F. ARGUMENT

### Assignment of Error No. 1 (79)

The Lower Court erred in not finding that the provision of Act 133, Public Acts of Michigan for 1945 (Sec. 18.990 (1) Michigan Statutes Annotated), setting up the standard of 50,000 population was an arbitrary and unreasonable classification.

The Act complained of provides at the outset, "No person shall act as bartender in any establishment licensed under this act to sell alcoholic liquor for consumption on the premises in any city now or hereafter having a population of 50,000 or more, unless such person shall be licensed by the commission under the provisions of this section: * * *"

The City of Dearborn joins the City of Detroit at the western boundary of Detroit. It has a population in excess of fifty thousand persons. Plaintiffs allege in their complaints that the standard of 50,000 population is an arbitrary and unreasonable one. The defendants did not file an answer, and stipulated "that the facts are as alleged in both bills of complaint" (41).

According to this Act, ANY person may mix and pour alcoholic beverages in any community having a population of less than 50,000. When that number is increased by one or more, bartenders must be licensed; and certain conditions must be fulfilled before a license may issue. "Persons" then must be "male" and 21 years of age or over, and shall submit to certain health examinations, etc. (9, 10). There is nothing in the act or title to indicate any reason for the 50,000 population standard.

The Title of the Michigan Liquor Law (Act No. 8, of the Public Acts of Michigan, 1933, Extra Session), as amended, reads:

> "AN ACT to create a liquor control commission for the control of the alcoholic beverage traffic within the state of Michigan, and to prescribe its powers, duties and limitations; to provide for the control of the alcoholic liquor traffic within the state of Michigan and the establishment of state liquor stores; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges thereto; to provide for the licensing and taxation thereof, and the disposition of the moneys received under this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for the confiscation and disposition of property seized under the provisions of this act; to provide a referendum in certain cases; and to repeal certain acts and parts of acts, general, local and special, and certain ordinances and parts of ordinances."

"Person" is defined by the act "to mean any person, firm, partnership, association, or corporation" (Section 2, Act 8, of the Public Acts of Michigan for 1933, Special Session—Section 18.972, Michigan Statutes Annotated).

Under the act complained of, women may be bartenders without any license in communities having a population of 50,000 or less; and, if the wife or daughter of a male owner of a bar, may obtain a license to be a bartender in cities having a greater population. But a female in any city over 50,000 population, unless a wife or daughter of a *male* ~~owner, may~~ not be a bartender.

There is nothing in the history of the exercise of the police power which justifies these provisions of this act. What magic is there in the number 50,000? Why not 5,000, or 100,000? This is not a law limiting the number of bars

to certain proportions of population; it is not a zoning law; it cannot be construed as an attempt to limit the number of bartenders, for that is controlled by the number of liquor establishments and the volume of business done in each establishment, regardless of population.

The act complained of expressly states:

> "For the purpose of this act a bartender shall be construed to mean a person who mixes or pours alcoholic liquor behind a bar."

There is nothing in this act which has anything to say about a bartender selling liquor; it expressly limits the definition of a bartender to a person who mixes or pours alcoholic liquor behind a bar. The question then arises, what peculiar condition attaches to mixing or pouring alcoholic liquors behind a bar in cities over 50,000 population which does not exist in communities under that population? What is there about women mixing or pouring liquor behind a bar in communities over 50,000 population which should prevent their doing the same in cities over that population? Appellants contend that there is no reason whatsoever for the standard of numbers of population as the basis for being a bartender.

The allegations of fact contained in the complaints of the appellants were admitted by the defendants. The only additional facts in the case are contained in the affidavits of the barmaids (bartenders) and owners of bars, filed at the time of the hearing on the application for a temporary injunction. Many of these affidavits show that the establishments which the plaintiffs owned and where they worked were properly conducted; that no complaints had ever been made against them (18-39). All of these affidavits show that all of the plaintiffs will suffer irreparable injury if the act is enforced.

**Assignment of Errors No. 2, 3, 4, 5, and 6 (79)**

The appellants claim that the trial court erred in not finding that Section 19(a) of the Liquor Control Act of Michigan, which was added by Act 133 of the Public Acts of Michigan for 1945, was an unfair and unjust classification as to sex, and an unfair discrimination against women owners of liquor establishments, women bartenders, daughters of female owners of bars, and an unfair discrimination between waitresses and female bartenders.

The dissenting opinion of the Honorable Frank A. Picard, Judge of the District Court of the Eastern District of Michigan, Southern Division (65-74), supports the contention of the plaintiffs and appellants, namely, that the act is unjustly and unfairly discriminatory, and is an unreasonable classification.

The case of *Fitzpatrick vs. Liquor Control Commission*, 316 Michigan 83, 93, relied upon by the defendants in the lower Court, and which was quoted by the majority opinion of the lower Court as "persuasive," (64) did not decide the questions of discrimination herein presented; and the question of being repugnant to the Constitution of the United States was not before the State Court. In that case, the bill of complaint of the plaintiffs showed they were barmaids in the City of Detroit. They raised the question of constitutionality of the act on the basis of a violation of the Constitution of the State of Michigan. The defendants in that case filed a motion to dismiss plaintiff's complaint, which was granted. No testimony was taken and no proofs were presented.

In the decision of the Michigan Supreme Court, the discrimination is admitted, but is sought to be justified on the

und of proper exercise of police power. In so doing, the
urt based its opinion upon conjecture. There was no
of submitted from which the Court could have arrived
any such conclusion. Plaintiffs were not given an op-
tunity to present any proofs, as the lower Court decided
matter upon the motion of the defendants to dismiss,
hout any answer on the part of the defendants, or
ofs.

The law does not prohibit women from acting as wai-
sses in bars or establishments where alcoholic liquor is
d in cities having a population of 50,000 or over; it does
t prohibit waitresses from selling alcoholic liquor in such
ablishments; it does not prohibit women from serving
uor in such establishments; but it does prohibit women
om mixing or pouring liquor behind a bar in cities having
population over 50,000. The law expressly states that
or the purpose of this act, a bartender shall be construed
mean *a person who mixes or pour alcoholic liquor be-
nd a bar.*" (italics ours).

The law expressly excepts from its operation wives and
ughters of male owners "of any establishment licensed to
ll alcoholic liquor for consumption on the premises."
laintiffs claim that there is no foundation in fact or
eory upon which such discriminations and classifications
ay be maintained as a valid exercise of the police power of
State. There is no question that the State has the right
regulate and even prohibit traffic in liquor, but once
aving granted the right, then all persons are entitled to
ne equal protection of the laws in connection therewith.
ertainly all persons within the same class should receive
ne equal protection of the laws.

There is no question that the State has the right to li-
ense bartenders, but in the exercise of that right, all per-

sons having the necessary qualifications should be entitled to a license. The Liquor Control Act of Michigan defines a person as "any person, firm, partnership, association, or corporation" (Section 2, Act 8, of the Public Acts of Michigan for 1933, Special Session; Section 18.972 Michigan Statutes Annotated).

There is nothing in the law which creates any discrimination by reason of sex in the matter of licensing establishments where alcoholic liquor may be sold. Women having the necessary qualifications may obtain licenses to own and operate such establishments; but by the provisions of the complained-of amendment to the law, women may not be bartenders in their own licensed establishments; the wives and daughters of male owners of any retail liquor establishments may be licensed to be bartenders, but the daughters of female owners may not be so licensed.

As stated by Judge Picard in his dissenting opinion (65-74), the law

> "discriminates between persons similarly situated; it denies plaintiffs equal protection of the laws; and its proviso that the wife and daughter of a male licensee may act as bartender while denying the same privilege to either the female licensee or her daughter, is palpably arbitrary, capricious and unreasonable, and not based on facts that can reasonably be conceived."

We believe that Judge Picard, in his dissenting opinion, ably discusses the main issues and resolves them in favor of the plaintiffs.

He said (66-67):

> "As stated in *Dobbins v. Los Angeles*, 195 U. S. 223:
>
> 'The question in each case is whether the legislature has adopted the statute in exercise of a rea-

sonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoilation of a particular class.'

"No legislature may in effect say

'We make this distinction, foolish and unfair though we know it to be, because we are in the mood.'

It cannot—because our courts have vigilantly and consistently closed the entrance to those fertile fields of unconstitutionality, unfairness and inequality by reiterating again and again that no law may be capricious, unreasonable or arbitrary. This law, in my humble opinion, bears the stigma of all three because:

A—Discriminating Between 'Persons Similarly Situated.'

"Mr. Justice McKenna in *Ohio ex rel. Lloyd v. Dollison*, 194 U. S. 445, says:

'Those contentions are that the Ohio statute denies plaintiff in error the equal protection of the law and deprives him of liberty and property without due process of law.

'*The first contention can only be sustained if the statute treat plaintiff in error differently from what it does others who are in the same situation as he. That is, in the same relation to the purpose of the statute.*' (Emphasis ours.)

"Our own Michigan Supreme Court in *People v. Case*, 153 Mich. 98, 116 N. W. 558, quoting from a Colorado decision, puts its stamp of approval on the constitutionality of an ordinance because it

'does not operate as a discrimination between different licensees. It applies equally to everyone of that class * * *'

"(Note: The Michigan law cannot pass this test of constitutionality.)

"See also *State ex rel. Galle v. New Orleans*, 67 L.R.A. 76 where the court said:

> 'Ordinances must be general in their character, and operate equally upon all persons within the municipality, of the same class, to whom they relate.'

"In *Watson v. Maryland*, 218 U. S. 173, we read:

> 'The selection of the exempted classes was within the legislative power, subject only to the restriction that it be not arbitrary or oppressive *and apply equally to all persons similarly situated.*' (Emphasis ours.)

"In the case at bar the Michigan Supreme Court boldly admits that this act discriminates between male and female licensees. In *Fitzpatrick v. Liquor Control Commission*, 25 N. W. 2d 118, 316 Mich. 83, the court, at page 91 said:

> 'Plaintiffs claim (and it must be admitted) that in so doing the legislature has discriminated between male and female licensees, as to who may act as bartenders.'

"Briefly that proviso permits the male owner, his wife and daughter, to act as bartenders in his business,

"But denies the same privilege to both the female owner and her daughter.

"If this is not an instance of unjust discrimination against persons similarly situated in the same business, in the same relation to the purpose of the statute and in the same class it would be difficult to find one."

In the case of *Glicker vs. Michigan Liquor Control Commission*, 160 F (2)96, (6 Circuit), the Court upheld the contention of the plaintiff that she was denied the equal protection of the laws by a rule of the Liquor Control Commission. While that case does not involve the same facts as the case at bar, nevertheless the principle of law is the

same. In that case the court pointed out that while traffic in liquor may be regulated and even prohibited in that field, laws, rules and regulations in that connection must be applied equally to all persons within that class. It was said that the action of the Liquor Control Commission could not be sustained if it were arbitrary or capricious, and that the process of law must be observed and applied equally to all persons within a class.

In the case at bar, waitresses may sell and serve liquor, but women may not mix or pour liquor behind a bar. Male owners of bars may mix and pour liquor behind a bar, but women owners may not. Wives and daughters of male owners may mix and pour liquor behind a bar, but daughters of female owners may not.

The case of *Adams vs. Tanner*, 244 U. S. 592; 61 L. Ed. 1336, was an appeal from the District Court of the United States dismissing a bill in a suit to enjoin enforcement of the employment agency law of the State of Washington. This Court, on page 1343, L. Ed. said:

> "Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But it is not enough to justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practices; and as to every one of them, no doubt, some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skilfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all the fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked."

The judgment of the lower court was reversed and the cause remanded for further proceedings.

In the case of *Power Manufacturing Co. vs. Saunders*, 274 U. S. 490; 71 L. Ed. 1165, this Court on page 1168, L. Ed. said:

> "The clause in the 14th Amendment forbidding a state to deny to any person within its jurisdiction the equal protection of the laws is a pledge of the protection of equal laws." (Citing cases) "It does not prevent a state from adjusting its legislation to differences in situation or forbid classification in that connection; but it does require that the classification be not arbitrary, but based upon a real and substantial difference having a reasonable relation to the subject of the particular legislation." (Citing cases)
>
> "No doubt there are subjects as to which corporations admissibly may be classified separately from individuals and accorded different treatment, and also subjects as to which foreign corporations may be classified separately from both individuals and domestic corporations and dealt with differently. But there are other subjects as to which such a course is not admissible, *the distinguishing principle being that classification must rest on differences pertinent to the subject in respect of which the classification is made.*" (Italics ours).

The case of *Frost vs. Railroad Commission*, 271 U. S. 583, 70 L. Ed., 1101 involved the constitutional validity of a certain transportation act of California as construed and applied to the plaintiffs. They were engaged under a single private contract in transporting citrus fruit over the highways betwen fixed termini. They were brought before the Railroad Commission of the State for the reason that they did not secure from the Commission a certificate of public

convenience and necessity. This Court, on pages 1104 and 1105, L. Ed., said:

> "It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence."

In the case of *Truax vs Corrigan*, 257 U. S. 312; 66 L. Ed., 254, this Court, on page 263 L. Ed., said:

> "But the framers and adopters of this Amendment were not content to depend on a mere minimum secured by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty.
>
> "The guaranty was aimed at undue favor and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality, on the other. It sought an equality of treatment of all persons, even though all enjoyed the protection of due process. Mr. Justice Field, delivering the opinion of this court in *Barbier v. Connolly*, 113 U. S. 27, 28, L. ed. 923, 924, 5 Sup. Ct. Rep. 357, of the equality clause, said: 'Class legislation, discriminating against some and favoring others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if, within the sphere of its operation, *it affects alike all persons similarly situated*, is not within the Amendment.'"

In the case at bar, all persons similarly situated are not affected alike. Not only is there discrimination between the sexes, whereby only men may be bartenders in communities having a population of over 50,000, but there is a discrimination and a subclassification made among women. The wife and daughter of a male owner may be bartenders; the daughter of a female owner may not be a bartender. A woman, in communities under 50,000 population, whether an owner of a bar or not, may be a bartender; a woman, in a community of over 50,000, may not be a bartender, even though she is a licensed owner of an establishment selling alcoholic liquor. Women may sell and serve alcoholic liquor anywhere in a bar, but women may not mix or pour liquor behind a bar.

In the case of *Liggett Co. vs. Baldridge*, 278 U. S. 104, 73 L. Ed. 204, the constitutionality of an act of the Pennsylvania legislature was brought before this Court. The act provided that every pharmacy or drugstore be owned only by a licensed pharmacist, and in the case of corporations, associations and partnerships, required that all the partners or members thereof be licensed pharmacists, with the exception that such corporations, associations, or partnerships already organized could continue as before. This Court held that the appellants' business was a property right and as such entitled to protection against state legislation in contravention of the Federal Constitution. This Court, on page 209 L. Ed., said:

> "The act under review does not deal with any of the things covered by the prior status above enumerated. It deals in terms only with ownership. It plainly forbids the exercise of an ordinary property right and, on its face, denies what the Constitution guarantees. A state cannot, 'under the guise of protecting the public, arbitrarily interfere with private business or prohibit

lawful occupations or impose unreasonable and unnecessary restrictions upon them;'" (Citing cases).

"In the light of the various requirements of the Pennsylvania statutes, it is made clear, if it were otherwise doubtful, that mere stock ownership in a corporation, owning and operating a drug store, can have no real or substantial relation to the public health; and that the act in question creates an unreasonable and unnecessary restriction upon private business. No facts are presented by the record, and, so far as appears, none were presented to the legislature which enacted the statute, that properly could give rise to a different conclusion."

This Court held the Act unconstitutional and reversed the decree of the lower Court.

In the case at bar, the only facts are contained in the amended complaints of the plaintiffs. The defendants admitted the capacity of the plaintiffs to sue and the theory on which suit was instituted (41). Plaintiffs charged that the liquor traffic in the state was being fully regulated by previous statutes and rules and regulations of the defendants, and that the attempted classification complained of had nothing to do with the regulation of the liquor traffic in Michigan (6, 13). The occupation of bartender is a legal one which can be and is fully and completely regulated and supervised by defendants.

There is nothing in the law which gives any inkling of any reason for the provision complained of. The section clearly shows that traffic in liquor is not sought to be regulated or controlled, as the definition of "bartender" is limited "to mean a person who mixes or pours alcoholic liquor behind a bar." Women may sell and serve liquor; and some women in the favored class of wives and daughters of male

owners, or women in communities of less than 50,000 may even mix and pour liquor behind a bar.

The case of *Gibbs vs. Buck*, 306 U. S. 65; 83 L. Ed. 1111, was an appeal from the order of a three-judge court refusing to dismiss a bill of complaint on motion and granting an interlocutory injunction against enforcement of a Florida statute. The complainants are the American Society of Composers, Authors and Publishers, an unincorporated association, and various other corporations publishing musical compositions, and a number of authors and composers and next of kin of deceased authors and composers. It is a class action under equity rules. Plaintiffs attacked the constitutionality of the Florida statute. The Supreme Court held that the Court had jurisdiction in reference to the jurisdictional amount, that the members had a common and undivided interest in the matter in controversy in the class suit, and that their right consisted of the right to conduct the business of licensing the public performance of their product for copyrights. This Court said:

> "Where the bill makes an attack upon the constitutionality of a state statute, supported by factual allegations sufficiently strong, as here, to raise 'grave doubts of the constitutionality of the Act' in the mind of the trial court, the motion to dismiss for failure to state a cause of action should be denied.'"

and on pages 1118 and 1119, said:

> "It is clear that there is equitable jurisdiction to prevent irreparable injury, if the sections of the state statute outlawing the Society raise issues of constitutionality. The heavy penalties for violations and the prohibition of the issue of licenses or collection of fees show the need to protect complainants. (2) Upon the conclusion that the motion to dismiss should be over-

ruled, there was no abuse of discretion in granting an interlocutory injunction. The damage before final judgment from the enforcement of the act as shown by the affidavits would be irreparable. The allegations in the bill of threats of enforcement and the declaration in the affidavit of the Attorney General of the State, the officer charged with supervision of enforcement, of readiness and willingness 'to prosecute any violations of said act,' sufficiently establish the immediate danger from enforcement."

In the case of *Cook Coffee Co. vs. Flushing*, 267 Michigan 131, the Supreme Court of the State of Michigan, said, on page 134:

> "The constitutional provisions do not mean that there can be no classification of the application of statutes and ordinances, *but only that the classification must be based on natural distinguishing characteristics and must bear a reasonable* relation to the object of the legislation."

and on page 135:

> "Ordinances discriminating against businesses located outside of cities in favor of businesses located within cities for a given length of time are void."

The attorney for defendants at the hearing on the application for a temporary injunction admitted that he had been unable to find in his search a case directly in point where such a privilege was denied to an on-sale female licensee (53).

The Michigan statute complained of by the appellants not only calls for a discrimination of persons similarly situated, but provides for sub-classifications in a class which is not supported by fact or law.

## Assignment of Error No. 7

The act complained of is repugnant to the 14th Amendment to the Constitution of the United States in that it creates an unreasonable and arbitrary classification, and denies the plaintiffs the equal protection of the laws.

In the case of *Dobbins vs. Los Angeles,* 195 U. S. 222, 49 L. Ed. 169, Mr. Justice Day on page 175 L. Ed. said:

> "'To justify the state in thus interposing its authority in behalf of the public it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.'
>
> "and, again, in *Holden v. Hardy,* 169 U. S. 366; 42 L. ed. 780, 18 Sup. Ct. Rep. 383, the same justice, again speaking for the court, said:
>
> "'The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class.'".

In the case at bar the occupation of bartender is a legal one. The right of the state to require bartenders to be licensed is not questioned. Plaintiffs claim that they have the

right to be licensed in the same manner as all other persons similarly situated.

In the case of *Watson vs. Maryland*, 218 U. S. 172; 54 L. Ed. 987, Mr. Justice Day, on page 990, said:

> "The selection of the exempted classes was within the legitimate power, subject only to the restriction that it be not arbitrary or oppressive *and apply equally to all persons similarly situated.*"

In the case of *Brown vs. City of Miami, Florida* in the Supreme Court of Florida, decided April 15, 1947, Justice Adams, speaking for the Court, said:

> "Appellant filed a bill for a declaratory decree under Chapter 87, Fla. Stat., 1941, F. S. A., testing the validity of a municipal ordinance of the City of Miami. The ordinance reads:
>
> "'* * * no female shall be employed for the purpose of, or permitted, *to serve any liquor by the drink over any bar or counter.*' * * *" Underscoring supplied.
>
> "Appellant, a woman, alleges that she is a skilled bartender and that she will be deprived of valuable rights in the continuance of her trade if the above ordinance is valid: that subsequent to the effective date of the ordinance she entered into a contract (not shown to be in writing) with appellee Foley to work for her as a bartender in the City of Miami; that she is in doubt of her rights under the quoted ordinance.
>
> "The City moved to dismiss the bill because the contract of employment was not in writing by reason whereof she was not authorized to avail herself of the remedy chosen under this statute. The other challenge to the bill asserted the validity of the ordinance.
>
> "The chancellor dismissed the bill and on appeal we will decide the two questions presented by the motion to dismiss.

"We hold the appellant is enfitled to the remedy under Chapter 87 otherwise known as the Declaratory Decree statute. It is true her contract of employment was not in writing, nevertheless the instrument, of which she is in doubt, is the municipal ordinance which is expressly covered by the statute.

"We also hold with appellant on the second question. In a large measure the City relies on our opinion, *Nelson v. State*, — Fla. —, 26 So. 2d. 60, wherein we declined to hold the ordinance bad. For emphasis we might repeat that we declined to hold the ordinance bad as distinguished from holding it good. As was pointed out in that case, we had no female before the court contesting the issue. Then and there we served notice that in that event the question was still open.

"In our opinion this ordinance is unreasonable as applied to this appellant. It recognizes that women may frequent bars and engage in every practice as men save and except they shall not *serve liquor by the drink over the bar* notwithstanding they may mix and serve it otherwise.

"A municipality only has power to enact reasonable ordinances. See *Roach v. Ephren*, 82 Fla. 523, 90 So. 609; *Perry Trading Co. v. City of Tallahassee*, 128 Fla. 424, 174 So. 854. A lengthy dissertation on the application of this ordinance to females occupying appellant's status would serve no useful purpose in our opinion. We can see no sound reason in law to sustain the ordinance and we hold it void. It follows the decree appealed from is reversed with directions to enter a decree not inconsistent with this opinion.

"Reversed."

Judge Picard, in his dissenting opinion (65-74), eloquently stated the position of the plaintiffs. There is little that can be added to his resume of the facts, argument, and the law:

"B.—It denies Plaintiffs Equal Protection of the Laws.

"Let us review the admitted facts. According to the bill of complaint this is not a new venture for Mrs. Goesaert. She is not just now going into the liquor business under this new law. She started business, bought property, and incurred obligations under a law that permitted her to do exactly what her license said she could do—own and operate a business.

"I accept the well known rule of law that a license to sell liquor is not a property right but a privilege: *(Glicker v. Michigan Liquor Control Commission*, 160 F. 2d 96) but here the question is not whether this woman will be granted a license. The issue is, having granted her a license can the legislature arbitrarily and unreasonably change the rules in the middle of the game as against her alone because she happens to be a woman licensee.

"In this connection it must be remembered that Michigan's Liquor law, 18:990, Mich. Stat. Ann., subsection 15, provides that one owning a liquor license, even in a community where the number of licensees operating exceeds the legal quota, may have his or her license renewed each succeeding year, and licenses almost automatically continue from year to year. Even quota restrictions do not prevail if such license was held before May 1, 1945. Plaintiff, Goesaert, did have such a license and evidently the legislature recognized in this privilege a property right that should not be restricted or removed. Still, while refusing to change the rules as unfair in one section of the act, in the succeeding section the legislature makes the debated change that has abridged her property rights immeasurably.

"Where is the 'equal protection' for her?

"Under this act a woman whose husband, a male licensee, has just died, finds herself at an added disadvantage. She not only has lost her husband, but

neither she nor her daughter may help run the family business as they did when the main breadwinner was alive. Across the street her male competitor may permit his wife and daughter to run his business even if he works in a factory miles away.

"Has not this woman by every test of reasoning been deprived of the equal protection of the laws?

"One's sense of fair play and justice rebels and it is not strange that in validating the constitutionality of this act in the *Fitzpatrick* case, supra, the court found it expedient to recall Justice Cooley's admonition in 'Constitutional Limitations,' viz, that courts cannot

> 'run a race of right, reason, and expediency with the legislative branch of the state government.'

"But to this I feel impelled to add an extract from *Liggett Co. v. Baldridge*, 278 U. S. 105—

> 'A state cannot, "*under the guise of protecting the public*, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.'" (Emphasis ours)

"C—The Law Is 'Palpably Arbitrary, Capricious and Unreasonable'

"*Lindsley v. National Carbonic Gas Co.*, (supra) cited by my colleagues, and a widely quoted case, holds that the constitutionality of any legislative enactment may be attacked

> 'when it is without any reasonable basis and therefore is purely arbitrary.'

And further that

> 'If any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.'

This law can be upheld then only if it is not arbitrary and unreasonable under any set of facts that can reasonably be conceived. Well, what facts can those be? The majority opinion seeks to enumerate by stating that the legislature might have had in mind, to-wit?

> '* * * that a grave social problem * * * would be mitigated to the vanishing point in those places where there was a male licensee ultimately responsible for the condition and the decorum maintained in his establishment.'

"What has been the 14 years' experience of the Liquor Commission on that point? Have there been more, or less, violations where the licensee was a woman acting as her own bartender, as compared to licenses held by males? Has the 'decorum' been better or worse?

"Another suggested conceivable fact

> '* * * the self interest of male licensees in protecting the immediate members of their families would generally insure a more wholesome atmosphere in such establishments.'

"What has been the experience here? Would not a widow, for example, with a valuable license be more determined than a male licensee in protecting her family and livelihood? Is a father more interested in assuring a 'wholesome atmosphere' than a mother?

"Further that the legislature

> 'may also have considered the likelihood that a male licensee could provide protection for his wife or daughter that would be beyond the capacity of a woman licensee * * *'

"But it must be remembered that no male adult is required to be present when the wife or daughter is bartender. In fact it is common knowledge that there are many male licensees who have other jobs, helping out only in the bar, daytimes, if working nights, or at night when working daytime. Surely the wife or daugh-

ter of a male licensee is just as subject to the perils of her employment, in the absence of her husband or father, as the female licensee or her daughter. Has not the female licensee provided protection to herself and daughter in the past?

"We are immediately challenged that this goes to the wisdom of the legislature and we agree that the wisdom of what the legislature has done is not the issue. This goes beyond the 'wisdom,' and we have searched in vain for the faintest semblance of facts that can be 'reasonably conceived' to bolster this admittedly discriminatory legislation.

"Nor can its enactment be logically defended on the theory that the police power is an inherent right of legislatures in matters of public health, safety, and morals. It is still necessary that the distinction be reasonably related to the object of the legislation; (*Rapid Transit Corp. v. New York*, 303 U. S. 578) and in holding an ordinance which prohibited sale of liquor in dry goods stores unconstitutional (*Chicago v. Netcher*, 183 Ill. 104) the court said:

> 'The restriction is purely arbitrary, not having any connection with and not tending in any way towards the protection of, the public against the evils arising from the sale of intoxicating liquor.'

"Can it be contended that it promotes public *safety* to permit only women to act as bartenders who happen to be the wife or daughter of the male owner of the business while neither the woman who owns her own license nor her daughter can so act?

"Can it be contended that a woman bartender would promote the *morals* of an establishment if her husband or her father were the licensee more than if she or her mother held the license?

"And is it claimed that the male owner is more solicitous of sanitation or *public health* than the female:

"On all three points, safety, morals, and health, would not the contrary be more likely to exist?

**Something New?**

"My colleagues cite as 'persuasive' but 'not controlling' the Michigan decision in *Fitzpatrick v. Liquor Control Commission*, supra. Let us examine two citations given therein.

"On page 124 (N. W.) it refers to Section 5363 of the Michigan Compiled Laws, 1897, to-wit—

> 'That this act shall not be so construed as to prevent the wife or other females who are bona fide members of the family of a proprietor of a saloon from tending bar or serving liquors in his saloon.'

"This may well be the fount from which the present provision in our law drew the breath of life so further analysis is interesting. The words 'in His saloon' are significant. Seldom if ever, fifty years ago, were women granted licenses to sell liquor. As a matter of fact women were not frequenters of bars or saloons. There was an ingenious subterfuge labeled 'family entrance' but comparatively few women availed themselves of that means of seeking refreshments. Today there is no such prohibition affecting women. They can and are licensees, and can and do frequent places where liquor is sold. The 1897 law has no application.

"The second citation refers to the California ordinance, *People v. Jemnez*, 49 Ca. App. 2d Supp. 739, 121 Pacific 2d, 543, 544, claimed by our Michigan Supreme Court to be a 'case quite in point with the case at bar.' We quote:

> 'The provisions of this section shall not apply to the mixing of alcoholic beverages * * * *by any on-sale* licensee nor to the mixing of such beverages *by the wife of any licensee* on the premises for which her husband holds an on-sale license.' (Emphasis ours)

"Obviously in California a woman may also be a licensee and it is worthy of note that in California if a woman is the licensee She May act as bartender to the same extent as the wife of the male licensee. We agree that the case is in point for plaintiffs—not defendant.

"Not only California but other states having similar legislation have carefully avoided writing in any liquor prohibition that places women in different categories.

"Many of these 'similar laws' are cited in defendant's brief but I find upon scrutiny that by inference at least, all favor plaintiffs and not defendant.

"In *Cronin v. Adams*, 192 U. S. 108, a case relating to the constitutionality of a Denver ordinance, we find that women—All Women including the wife and female children of the owner—were prohibited from entering any saloon.

"In *People v. Case*, Supra, the Flint ordinance barred women—All Women—from being in or about the bar.

"In *City of Hoboken v. Goodman*, 68 N. J. L. 217; 51 Atl. 1092, the ordinance in question is very significant. It prevented any female from acting as bartender unless she was the wife of the owner Or owned The Business Herself.

"The California Statutes (Deering's California General Laws, Vol. 2, Act 3796, page 1353, Sec. 56.4 page 1413) also exempted from the class prohibited the wife of the owner And The Owner Herself.

"In *Nelson, Chief of Police v. State, ex rel, Gross*, 26 So. (2nd) 60, the prohibition was against All Women—no exceptions.

"Does it mean nothing that all states passing similar laws have avoided drawing the distinctions between women bartenders that Michigan has?

"Can it be that members of the legislatures of those states are less solicitous of their women folks than Michigan? Or has 'chivalry' (*Fitzpatrick* case supra) returned to the Michigan legislature alone among our forty-eight states?"

**Assignment of Errors No. 8, 9, and 10**

The appellants contend that the majority opinion of the lower Court is based upon conjecture and supposition; that the plaintiffs' allegations of fact were admitted, and should have been considered by the lower Court.

This claim is supported by the final pages of Judge Picard's dissenting opinion (72-73):

"Before concluding I again refer to *Glicker v. Michigan Liquor Commission*, supra. While the issue there was different there is much in common between these two cases and much substance in the *Glicker* case that can be applied here.

"For example, on page 99 we find—

'In *Hartford Steam Boiler Inspection & Insurance Company v. Harrison*, 301 U. S. 459, 57 S. Ct. 838, 839, 81 L. Ed. 1223, the Court pointed out that while the Fourteenth Amendment allows reasonable classification of persons, yet it forbids unreasonable or arbitrary classification or treatment, and * * * the rights of all persons must rest upon the same rule under similar circumstances * *. In *Sunday Lake Iron Company v. Township of Wakefield*, 247 U. S. 350, 38 S. Ct. 495, 62 L. Ed. 1154, the Court said at page 352 of 247 U. S., at page 495 of 38 S. Ct., 62 L. Ed. 1154—"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against Intentional And Arbitrary Discrimination, whether occasioned by ex-

press terms of a statute or by its improper execution through duly constituted against." (Emphasis added.) * * * *Snowden v. Hughes*, supra, 321 U. S. 1, at page 8, 64 S. Ct. 397, at page 401, 88 L. Ed. 497, "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection Unless There Is Shown To Be Present In It An Element Of Intentional Or Purposeful Discrimination."' (Emphasis added.)

"The above could have been written for this case."

The facts in the case at bar were admitted by the defendants. The legislation complained of shows no reason or excuse for the discrimination and classification. The purpose of the Liquor Control Act is to control the liquor traffic in the State of Michigan. It is alleged and admitted that the liquor traffic is adequately controlled and regulated by previous statutes and rules and regulations of the defendants (6, 13).

It is a well recognized rule of law in Michigan, enunciated by the Supreme Court of Michigan in many cases, that for the purpose of a motion to dismiss, the material allegations of fact contained in a plaintiff's complaint must be taken as true.

*Powers vs. Fisher*, 279 Mich. 442.

*Skutt vs. City of Grand Rapids*, 275 Mich. 258.

*Goodfellow vs. Detroit Civil Service Commission*, 312 Mich. 226.

*Farrell vs. Unemployment Compensation Commission*, 317 Mich. 676.

In the case of *Gilmer vs. Miller*, 319 Mich. 136, Chief Justice Carr on page 138 said:

> "In determining the question presented on the appeal, the material allegations of fact properly pleaded in the declaration and inferences to be drawn therefrom must be taken as true and construed in the light most favorable to plaintiffs." (Citing cases)

The majority opinion of the lower Court not only disregarded the admitted facts, but posited its decision upon conjecture and supposition not supported by the record.

One of the suppositions was that "it is conceivable that the Legislature was of the opinion that a grave social problem existed because of the presence of female bartenders in places where liquor was served in the larger cities of Michigan" (62).

Again we wish to call this Court's attention to the fact that women are not prohibited from selling and serving liquor in the very same places where they are forbidden to mix and pour liquor. Wives and daughters of *male* owners may mix and pour liquor behind a bar, while female owners and their daughters are prohibited from so doing.

What "grave social problem" is being eliminated under the above circumstances? How can a female bartender, mixing and pouring drinks behind a bar constitute a social problem which is eliminated by a male mixing and pouring liquor, behind a bar, which women sell and serve in the same establishment? Plaintiffs fail to see the logic of such contentions.

The lower court majority opinion conjectured that the Legislature may have deemed it necessary to have a male licensee responsible and male control (63).

The act is completely devoid of anything upon which such a conjecture may be predicated. There is nothing in the law which provides that a male licensee must be on the premises where women work as waitresses and sell and serve liquor.

There is nothing in the law which requires a male licensee to remain in control where his wife and/or daughter are bartenders.

There is nothing in the law which limits the activity of the licensed bartender to any particular establishment. The proviso of the act says: "the wife or daughter of the male owner of any establishment licensed to sell alcoholic liquor for consupmtion on the premises may be licensed as a bartender by the commission under such rules and regulations as the commission may establish."

A wife or daughter of a male owner could be licensed as a bartender and could work anywhere she wished. There is nothing in the law to restrict her to the establishment owned by her husband or father.

## ASSIGNMENT OF ERROR NO. 11

The decision of the lower Court in dismissing plaintiffs' complaints is contrary to the law.

Plaintiffs contend that the action of the Legislature in adopting the act complained of in the case at bar was not a valid exercise of its police power.

Corpus Juris defines police power as follows (12 C. J. 904):

> "Police power is the power inherent in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of society."

and on page 928 of 12 C. J., we find:

> "The federal government, therefore, is paramount within the scope of the powers conferred on it by the constitution; and a state statute enacted in pursuance of the police power is void if in contravention of any express provision of the Federal Constitution."

This Court has on innumerable occasions accepted this definition of police power.

In the case of *Ohio Ex Rel Lloyd v. Dollison*, 194 U. S. 445, reported in 48 L. Ed. 1063, Mr. Justice McKenna, on page 1065, said:

> "Those contentions are that the Ohio statute denies plaintiff in error the equal protection of the law, and deprives him of liberty and property without due process of law.
>
> "*The first contention can only be sustained if the statute treats plaintiff in error differently from what it does others who are in the same situation as he—that is, in the same relation to the purpose of the statute.*" (Italics ours)

In the case of *Connolly vs. Union Sewer Pipe Co.*, 184 U. S. 539, 46 L. Ed. 679, Mr. Justice Harlan, on page 689, said:

> "The question of constitutional law to which we have referred cannot be disposed of by saying that the statute in question may be referred to what are called the police powers of the state, which, as often stated by this court, were not included in the grants of power to the general government, and therefore were reserved to the states when the Constitution was ordained. But as the Constitution of the United States is the supreme law of the land, anything in the Constitution or statutes of the states to the contrary notwith-

standing, a statute of a state, even when avowedly enacted in the exercise of its police power, must yield to that law. No right granted or secured by the Constitution of the United States can be impaired or destroyed by a state enactment, whatever may be the source from which the power to pass such enactment may have been derived. 'The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is the supreme law.' The state has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health, and the public safety; but if, by their necessary operation, its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void. *Gibbons v. Ogden*, 9 Wheat. 1, 210; 6 L. Ed. 243, 247; *Missouri M. & T. R. Co. v. Huber*, 169 U. S. 613, 626; 42 L. Ed. 878, 18 Sup. Ct. Rep. 488.

"What may be regarded as a denial of the equal protection of the laws is a question not always easily determined as the decisions of this Court and of the highest courts of the states will show. It is sometimes difficult to show that a state enactment, having its source in a power not controverted, infringes rights protected by the national Constitution. No rule can be formulated that will cover every case. But upon this general question we have said that the guaranty of the equal protection of the laws means '*that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances.*'" (citing cases)

In the case at bar, defendants have admitted the facts alleged in the plaintiffs' Amended Complaints and rely upon the State's police power for the constitutionality of the act. There is no question but that there is discrimination between persons in the same classification. Some of

the plaintiffs are licensed bar owners. Admittedly they have large sums of money invested in their businesses. Admittedly they will either have to close their places of business or hire male bartenders. In either event, they will lose their investments of years of work and savings. Some of the plaintiffs are barmaids. Admittedly they will lose their jobs and be deprived of their means of livelihood (4, 12, 18-39, 41).

Plaintiffs contend that the legislation they complain of in the case at bar is not only discriminatory but is an arbitrary and unjustifiable attempt at classification within a classification, which results in a denial of the equal protection of the laws to them and deprives them of their property in violation of the 14th Amendment to the Constitution of the United States.

## CONCLUSION

Plaintiffs respectfully submit that the act complained of is a violation of the 14th Amendment to the Constitution of the United States. It is discriminatory without any basis for discrimination. The act itself outlines no reason or justification for the discrimination. The purposes are covered by the general purpose of the act to control and regulate liquor traffic in Michigan. We contend that the mixing and pouring of alcoholic liquor behind a bar on the part of a woman who is neither the wife of a licensee nor the daughter of a male licensse has nothing whatever to do with the regulation and control of liquor traffic.

The suggestion that was made at the time of the hearing, that the Legislature might have had in mind the necessity of having a man upon the premises, is not supported by the facts because there is nothing in either the law or the

regulations of the Liquor Control Commission that requires that a man must be on the premises where liquor is dispensed or mixed and poured. There is nothing in the law or the regulations which requires that a male licensee must be on the premises.

We respectfully submit that the act complained of does arbitrarily discriminate against people in the same category and classification and that by reason thereof, the plaintiffs, being in that classification so discriminated against, have been and will be denied the equal protection of the laws and will be deprived of their property without due process of law, in violation of the 14th Amendment to the Constitution of the United States.

Respectfully submitted,
Anne R. Davidow,
Attorney for Plaintiffs and
Appellants.